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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 150902808-6155-01]

RIN 0648-BF04

Fisheries of the Northeastern United States; Amendment 17 to the Atlantic Surfclam and Ocean Quahog Fishery Management Plan

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement Amendment 17 to the Atlantic Surfclam and Ocean Quahog Fishery Management Plan. Amendment 17 management measures were developed by the Mid-Atlantic Fishery Management Council to: Add cost recovery provisions for the Individual Transferable Quota component of the fishery; modify how biological reference points are incorporated into the fishery management plan; and remove the plan's optimum yield range. These changes are intended to make the management plan consistent with requirements of the Magnuson-Stevens Act, and to improve the management of these fisheries.

DATES: Comments must be received on or before [*insert date 30 days after date of publication in the FEDERAL REGISTER*].

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2015-0057, by any of the following methods:

- **Electronic Submission:** Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2015-0057, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.
- **Mail:** Submit written comments to John K. Bullard, Regional Administrator, NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope: “Comments on Surfclam/Ocean Quahog Amendment 17.”

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the commenter may be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

Copies of Amendment 17, including the draft Environmental Assessment, preliminary Regulatory Impact Review, and economic analysis, are available from the Mid-Atlantic Fishery Management Council, 800 North State Street, Suite 201, Dover, DE 19901. The EA/RIR is also accessible via the Internet at: www.greateratlantic.fisheries.noaa.gov.

FOR FURTHER INFORMATION CONTACT: Douglas Potts, Fishery Policy Analyst, 978-281-9341.

SUPPLEMENTARY INFORMATION:

Background

This action proposes regulations to implement Amendment 17 to the Atlantic Surfclam and Ocean Quahog Fishery Management Plan (FMP). The Mid-Atlantic Fishery Management Council developed this amendment to establish a program to recover the costs of managing the surfclam and ocean quahog individual transferable quota (ITQ) fisheries, as required by the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), and to make administrative changes to improve the efficiency of the FMP.

Cost Recovery

The Magnuson-Stevens Act requires each limited access privilege program, such as the surfclam/ocean quahog ITQ program, to include measures to recover the costs of management, data collection and analysis, and enforcement activities involved with the program. This action proposes to implement a cost recovery program for the surfclam and ocean quahog ITQ fisheries modeled on the Council's existing cost recovery program for the Tilefish Individual Fishing Quota (IFQ) Program.

Under the proposed program, any surfclam or ocean quahog ITQ permit holder (also referred to in this preamble as "allocation holders") who has quota share (i.e., receives an initial allocation of cage tags each year) would be responsible for paying a fee at the end of the year. The fee would be based on the number of the ITQ permit holder's cage tags that were ultimately used to land clams that year. In the first quarter of each year, the Greater Atlantic Regional Fisheries Office (GARFO) would announce the fee percentage and the associated per-tag fee for that year, and distribute this announcement widely. Although annual fee information would not be published in the **Federal Register**, distribution of the GARFO announcement would include posting it on the GARFO website and sending it to each ITQ permit holder with quota share.

The fee percentage would be based on the total recoverable costs from the prior fiscal year, adjusted for any prior over- or under-collection, divided by the total ex-vessel value of the fishery. The resulting percentage cannot exceed the 3-percent statutory maximum. Then NMFS would calculate a per-tag fee based on the total number of cage tags used to land surfclams or ocean quahogs in the previous year. This tag fee would be separate from, and in addition to, the price allocation holders currently pay to the tag vendor to obtain the physical cage tags each year.

This process includes an inherent assumption that a similar number of cage tags will be used each year. While the fishery has been largely stable over time, many factors (e.g., weather events, market demand, etc.) may result in the use of more or fewer tags in any given year. As a result, we fully anticipate that, in some years, we will collect more or less money than is necessary to recover our costs. Refunding over-collections and issuing supplemental bills to make up for shortfalls would increase the cost of administering the fishery, which would increase the amount charged in bills the following year. To avoid these additional costs, we would apply any over- or under-collection to our calculation of recoverable costs and per-tag fees for the following year. Our communications with the ITQ permit holders each year will make clear that any prior over- or under-collection adjustments will be incorporated into the following year's cost-recovery billing.

The Council produced an analysis as part of Amendment 17 using 2013 landings and ex-vessel value and assuming a 0.2-percent fee, which represents approximately \$100,000 of recoverable costs. This analysis showed that fees would have been \$0.56 per surfclam cage tag and \$0.27 per ocean quahog cage tag. A scenario using the statutory maximum 3 percent showed the fees could have been as high as \$8.36 per surfclam tag and \$4.10 per ocean quahog

tag. However, reaching that 3-percent maximum would require recoverable costs to be over \$1.5 million, far higher than any reasonable estimate for the management costs for these fisheries. Annual recoverable costs for the first 5 years of our other Greater Atlantic Region IFQ fisheries have averaged approximately \$21,000 for the Tilefish IFQ Program, and \$113,000 for the Limited Access General Category Scallop IFQ Program. Based on the management requirements of these programs, we anticipate total costs for the surfclam and ocean quahog ITQ program would be somewhere between the costs of these other programs.

If allocation holders transfer some or all of their cage tags or quota share after the start of the fishing year, they would still be liable for any cost recovery fee based on landings of their initial allocation. Here is an example of how this might work for an allocation holder: Carol has a surfclam ITQ permit with a quota share ratio of 0.02, meaning she is allocated 2 percent of the total surfclam ITQ quota each year. If in a given year the quota is 1 million bushels (53.2 million L), Carol's allocation would be 20,000 bushels (1.6 million L), or 625 cage tags (i.e., 20,000 (1.6 million L) bushels divided by 32 bushels (1,700 L) per cage). In the first quarter of the year, NMFS announces that the fee will be \$0.50 per tag. Over the course of the year, Carol uses 200 cages to harvest surfclams, and leases 400 cage tags to Bob. Bob in turn uses 100 cage tags and leases the 300 remaining tags to Joe who uses 150. Because each cage tag has a unique number, we can identify which tags originated from Carol's allocation no matter how many times they were leased. Of the original 625 tag allocation a total of 450 tags were used; 200 by Carol, 100 by Bob, 150 by Joe, and 175 tags were never used. At the end of the fishing year, Carol would receive a cost recovery bill for \$225.00 based on the \$0.50 tag fee multiplied by the 450 tags that were used to land surfclams.

We have already begun tracking recoverable costs in these fisheries. To the extent possible, we are tracking the recoverable costs of the surfclam and ocean quahog fisheries separately, although some costs are shared (e.g., routine maintenance of our database for tracking allocations and cage tags). Under these proposed regulations, at the start of the 2017 calendar year, we would use the total recoverable costs from the 2016 fiscal year (October 1, 2015, through September 30, 2016) and the total value of the fisheries in the 2016 calendar year, to calculate fee percentages for both surfclam and ocean quahogs. We would then use the total number of tags used during the 2016 fishing year to determine a per-tag fee for the 2017 fishing year.

In early 2018 (most likely February or March) we would issue the first cost recovery bills based on how many cage tags were used in 2017 and the 2017 per-tag fee. At the same time, we would announce the fee percentage and per-tag fees for the 2018 fishing year. If the total amount to be collected is higher or lower than the total recoverable costs used to calculate the 2017 per-tag fee (i.e., the fiscal year 2016 recoverable costs), we would adjust the fiscal year 2017 recoverable costs accordingly when calculating the 2018 per-tag fee. This anticipated timeline is detailed in Table 1.

Table 1. Surfclam and Ocean Quahog Proposed Cost Recovery Implementation Timeline

| Date | Anticipated Action |
|--------------|---|
| October 2015 | NMFS begins tracking recoverable costs for surfclam and ocean quahog ITQ fisheries |
| March 2017 | NMFS announces the 2017 cost recovery per-tag fee, based on recoverable costs in fiscal year 2016 and the total number of cage tags used in calendar year 2016 |
| March 2018 | NMFS issues a 2017 bill to each ITQ shareholder based on the previously announced per-tag fee and how many of the shareholder's 2017 cage tags were ultimately used to land clams |

| | |
|------------------|---|
| March 2018 | Concurrent with issuing bills for 2017, NMFS announces the 2018 cost recovery per-tag fee, based on costs in fiscal year 2017 (adjusted for any anticipated over- or under-collection) and the total number of cage tags used in calendar year 2017 |
| Subsequent years | Each year, NMFS would issue bills for the previous fishing year and announce the cost recovery per-tag fee for the current fishing year. |

Cost recovery bills would be due within 30 days of the date of the bill, and would be paid using the Greater Atlantic Regional Fisheries Office's fishing industry website: Fish Online (www.greateratlantic.fisheries.noaa.gov/apps/login/login). Fish Online is a secure website and NMFS provides a username and password for individuals to access their accounts. Members of the fishing industry may use the site to check details about their fishing permit and landings. The webpage has been used since 2010 to collect cost recovery payments for the Tilefish IFQ and Limited Access General Category Scallop IFQ fisheries. Cost recovery bills may be paid with a credit card or with an account number and routing number from a bank account, often referred to as an Automated Clearing House or ACH payment. Once bills are issued, ITQ shareholders would be able to log onto Fish Online and access the Cost Recovery section. Payments made through Fish Online are processed using the U.S. Treasury Department's Pay.gov tool, and no bank account or credit card information is retained by NMFS. We would not be able to accept partial payments or advance payments before bills are issued. We do not anticipate that other payment methods would be accepted, as the proposed payment system has been effective for other cost recovery programs. However, other payment methods may be authorized if the Regional Administrator determines that electronic payment is not practicable.

The proposed regulations include procedures in case an ITQ permit holder should fail to pay their cost recovery bill. If a bill is not paid by the due date, NMFS would issue a demand letter, formally referred to as an initial administrative determination. This letter would describe

the past-due fee, describe any applicable interest or penalties that may apply, stipulate a 30-day deadline to either pay the amount due or submit a formal appeal to the Regional Administrator, and provide instructions for submitting such an appeal. If no appeal is submitted by the deadline, the Regional Administrator would issue a final decision letter. An appeal must be submitted in writing, allege credible facts or circumstances, and include any relevant information or documentation to support the appeal. If an appeal is submitted, the Regional Administrator would appoint an appeals officer to determine if there is sufficient information to support the appeal and that all procedural requirements have been met. The appeals officer would then review the record and issue a recommendation to the Regional Administrator. The Regional Administrator, acting on behalf of the Secretary of Commerce, would then review the appeal and issue a written decision. If the Regional Administrator's final determination (whether or not there was an appeal) finds that ITQ permit holder is out of compliance, full payment would be required within 30 days. Following a final determination, we may also suspend the ITQ permit, thereby prohibiting any transfer of cage tags or quota share, use of associated cage tags to land surfclams or ocean quahogs, or renewal of the ITQ permit until full payment, including any interest or penalties, is received. If full payment is not received within this final 30-day period as required, we may then refer the matter to the appropriate authorities, including the Department of Treasury, for collection.

Each year NMFS would issue a report on the status of the ITQ cost recovery program. This report would provide details of the recoverable costs to be collected, the success of previous collection efforts, and other relevant information.

Biological Reference Points

Under National Standard 1, the Magnuson-Stevens Act requires that each Council FMP define overfishing as a rate or level of fishing mortality (F) that jeopardizes a fishery's capacity to produce maximum sustainable yield (MSY) on a continuing basis, and defines an overfished stock as a stock size that is less than a minimum biomass threshold (see 50 CFR 600.310(e)(2)). The Magnuson-Stevens Act also requires that each FMP specify objective and measurable status determination criteria (i.e., biological reference points) for identifying when stocks covered by the FMP are overfished or subject to overfishing (see section 303(a)(10), 16 U.S.C. 1853). To fulfill these requirements, status determination criteria are comprised of two components: 1) A maximum fishing mortality threshold; and 2) a minimum stock size threshold.

Currently, the biological reference points in the FMP were set by Amendment 12 for ocean quahog (October 26, 1999; 64 FR 57587) and Amendment 13 for surfclam (December 16, 2003; 68 FR 69970). Although several stock assessments since these amendments have produced new biological reference points, there has not been an FMP amendment to adjust the figures in the plan. As a result, the definitions in the FMP have become inconsistent with the best scientific information available. This action would modify how these biological reference points are defined in the FMP. Rather than using specific definitions, the FMP would include broad criteria to allow for greater flexibility in incorporating changes to the definitions of the maximum fishing mortality threshold and/or minimum stock size threshold as the best scientific information consistent with National Standards 1 and 2 becomes available. The Council has already adopted this approach in several of its other FMPs, and this change would make the Surfclam and Ocean Quahog FMP consistent with these other FMPs.

The maximum fishing mortality threshold for surfclams and ocean quahogs would be defined as F_{MSY} (or a reasonable proxy thereof), which is a function of productive capacity, and

would be based upon the best scientific information consistent with National Standards 1 and 2. Specifically, F_{MSY} is the fishing mortality rate associated with MSY. The maximum fishing mortality threshold (F_{MSY}) or a reasonable proxy may be defined as a function of (but not limited to): Total stock biomass; spawning stock biomass; total egg production; and may include males, females, both, or combinations and ratios thereof that provide the best measure of productive capacity for each of the species managed under the FMP. Exceeding the established fishing mortality threshold would constitute overfishing as defined by the Magnuson-Stevens Act.

The minimum stock size threshold for each of the species under the FMP would be defined as $\frac{1}{2} B_{MSY}$ (or a reasonable proxy thereof), which is a function of productive capacity, and would be based upon the best scientific information, consistent with National Standards 1 and 2. B_{MSY} is the stock biomass associated with MSY. The minimum stock size threshold ($\frac{1}{2} B_{MSY}$) or a reasonable proxy may be defined as a function of (but not limited to): Total stock biomass; spawning stock biomass; total egg production; and may include males, females, both, or combinations and ratios thereof that provide the best measure of productive capacity for each of the species managed under the FMP. The minimum stock size threshold would be the level of productive capacity associated with the relevant $\frac{1}{2}$ MSY level. Should the measure of productive capacity for the stock fall below this minimum threshold, the stock would be considered overfished as defined by the Magnuson-Stevens Act. The target for rebuilding, when applicable, is specified as B_{MSY} (or reasonable proxy thereof) at the level of productive capacity associated with the relevant MSY level, under the same definition of productive capacity as specified for the minimum stock size threshold.

Specific definitions or modifications to the status determinations criteria, and their associated values, would result from the most recent peer-reviewed stock assessments and their

panelist recommendations. The Northeast Regional Stock Assessment Workshop/Stock Assessment Review Committee (SAW/SARC) process is the primary mechanism utilized in the Greater Atlantic Region at present to review scientific stock assessment advice, including status determination criteria, for federally-managed species. There are also periodic reviews, which occur outside the SAW/SARC process that are subject to rigorous peer-review and may also result in scientific advice to modify or change the existing stock status determination criteria. These periodic reviews outside the SARC process could include any of the following review processes listed below, as deemed appropriate by the Council and NMFS.

- Council Scientific and Statistical Committee (SSC) Review
- Council externally contracted reviews with independent experts (e.g., Center for Independent Experts - CIE)
- NMFS internally conducted review (e.g., comprised of NMFS scientific and technical experts from NMFS Science Centers or Regions)
- NMFS externally contracted review with independent experts (e.g., CIE)

The scientific advice developed on stock status determination criteria would be provided to the Council's SSC. The SSC would use this information to develop acceptable biological catch (ABC) recommendations that address scientific uncertainty based on the information provided in the peer reviewed assessment of the stock. The SSC would provide these recommendations to the Council. In addition, the Council's Industry Advisory groups are often engaged to provide management recommendations to the Council. The Council would then consider all available information and advice when developing its own recommendations to put forward through the regulatory process for setting the annual specifications for the upcoming

fishing year, which is the primary mechanism for updating and adjusting management measures on a regular basis in order to meet the goals of the FMP.

Optimum Yield

Currently, the FMP specifies a surfclam optimum yield range of 1.85-3.40 million bushels (98.5 to 181.0 million L), and an ocean quahog the optimum yield range of 4.00-6.00 million bushels (213.0 to 319.4 million L). The Council must select commercial quotas within these ranges. Under the current FMP process, modification to the upper end of the ranges would require a framework adjustment. Commercial quotas may be set below the lower bounds if the SSC sets a lower ABC, resulting in an optimum yield range that is higher than ABC. The current optimum yield ranges in the FMP were based on scientific information and industry input from the 1980's, and have not been adjusted to reflect subsequent changes in our understanding of the biology of these stocks.

This action proposes to remove the optimum yield ranges from the FMP, but commercial quotas for surfclam and ocean quahog would continue to be set under the existing system of catch limits. This is consistent with the other FMPs that the Council manages; surfclam and ocean quahog are the only stocks with optimum yield ranges specified in the FMP.

As prescribed under this quota setting process, the Council may not exceed the ABC recommendations of the SSC, and would continue to specify annual catch limits, targets, and commercial quotas as otherwise described in the FMP. As part of the specifications process, the advisory panel would develop recommendations for commercial quotas, including optimum yield recommendations which would be provided to the Council.

This action also proposes a modification to the regulations pursuant to the Secretary's authority under section 305(d) of the Magnuson-Stevens Act (16 U.S.C 1855(d)) to ensure that

FMPs are implemented as intended and consistent with the requirements of the Magnuson-Stevens Act. This action proposes to modify the regulations at 50 CFR 648.11(a) so that vessels holding a Federal permit for Atlantic surfclam or ocean quahog are included on the list of vessels required to carry a NMFS-certified fisheries observer if requested by the Regional Administrator. All other Federal fisheries permits issued in the Greater Atlantic Region are already covered by either § 648.11(a) or a similar provision at § 697.12(a), which applies to vessels with an American lobster permit. The recent Standardized Bycatch Reporting Methodology (SBRM) Omnibus Amendment final rule (June 30, 2015; 80 FR 37182) modified how at-sea observers are assigned to fishing vessels. The Council's discussions of that action and analysis of alternatives clearly indicate the Council intended for the requirement (that vessels carry a NMFS-certified observer if requested by the Regional Administrator) to apply to all fisheries subject to the SBRM Omnibus Amendment final rule. The surfclam and ocean quahog fisheries have historically had very low bycatch and have been a low priority for observer coverage. Prior to the SBRM Omnibus Amendment final rule, NMFS used its discretion to prioritize observer coverage to other fishing fleets. The SBRM Omnibus Amendment final rule removed this discretion and implemented a formulaic process for assigning observer coverage across fisheries. This resulted in observer coverage being assigned to the surfclam and ocean quahog fisheries. Subsequent to the publication of the SBRM Omnibus Amendment final rule, it became apparent that § 648.11(a) does not currently apply to surfclam and ocean quahog vessel permits. Over 700 vessels have a surfclam or ocean quahog permit. However, all but 15 of those vessels are already subject to this observer requirement because they also carry another Federal permit.

Pursuant to section 303(c) of the Magnuson-Stevens Act, the Council has deemed that this proposed rule is necessary and appropriate for the purpose of implementing Amendment 17,

with the exception of the measure noted above as proposed under the Secretary's authority under section 305(d) of the Magnuson-Stevens Act.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with Amendment 17, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Council prepared a draft environmental assessment (EA) for this FMP amendment that analyzes the impacts on the environment as a result of this action. A copy of the draft EA is available from the Federal e-Rulemaking portal www.regulations.gov. Type "NOAA-NMFS-2015-0057" in the Enter Keyword or ID field and click search. A copy of the draft EA is also available upon request from the Council (see **ADDRESSES**).

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The Council prepared an analysis of the potential economic impacts of this action, which is included in the draft EA for this action and supplemented by information contained in the preamble of this proposed rule. The SBA defines a small business in the commercial harvesting sector, as a firm with receipts (gross revenues) of up to \$5.5 million for shellfish businesses and \$20.5 million for finfish businesses. Using these definitions, there are 26 small entities and 3

large entities that landed surfclam and/or ocean quahog in 2013, the most recent year of data available to the Council during development of Amendment 17.

The alternatives for the mechanism to update biological reference points and to change the optimum yield range in the FMP are administrative in nature. None of the alternatives are expected to change fishing methods or activities, nor will they alter the catch and landings limits for these species or the allocation of the resources among user groups. These administrative alternative measures are not expected to impact the economic aspects of these fisheries, as they are not expected to produce changes in landings, prices, consumer and producer surplus, harvesting costs, enforcement costs, or to have distributional effects.

Four alternatives were considered for the development of a cost recovery program. All of the alternatives would recover the costs of management, data collection and analysis, and enforcement activities related to the ITQ program, as required by the Magnuson-Stevens Act. Each alternative varies in how these costs would be distributed across the fishery. The total recovered costs could be up to the statutory maximum of 3 percent of the ex-vessel value of surfclams and ocean quahogs harvested under the ITQ program, although estimates predict that the recoverable costs would be much lower than this maximum. A conservative initial estimate placed costs at approximately \$100,000 annually, or about 0.2 percent of the ex-vessel value of the fishery in 2013. For comparison, both a 3-percent fee and a 0.2-percent fee were used in the analysis of potential economic impact of the alternatives. Table 2 presents the average cost associated with a 0.2- and 3-percent cost recovery program for active surfclam and ocean quahog fishery small entities in 2013.

Table 2 Active surfclam and ocean quahog fishery small entities in 2013, including entity average surfclam and ocean quahog (SC/OQ) revenues

| Revenue (million s of dollars (M)) | Count of Small Entity Firms | Average Gross Receipts | Average SC/OQ Receipts | Average Cost associated with a 0.2- percent fee recovery program | Average Cost associated with a 3- percent fee recovery program | Per firm average Cost associated with a 0.2- percent fee recovery program | Per firm average Cost associated with a 3- percent fee recovery program |
|---|--|---------------------------------------|---------------------------------------|---|---|--|--|
| 0-1M | 17 | \$421,701 | \$393,488 | \$787 | \$11,805 | \$46 | \$694 |
| 1-2M | 5 | \$1,366,782 | \$1,355,820 | \$2,712 | \$40,675 | \$542 | \$8,135 |
| 2-5.5M | 4 | \$3,591,773 | \$3,489,377 | \$6,979 | \$104,681 | \$1,745 | \$26,170 |
| Total | 26 | \$1,091,150 | \$1,054,843 | \$2,110 | \$31,645 | \$81 | \$1,217 |

As illustrated by this analysis and Table 2 (above), the anticipated annual fee for each small entity is very low under both the anticipated 0.2-percent fee and the statutory maximum 3-percent fee, and would not have a significant economic impact on a substantial number of small entities.

As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: March 10, 2016.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648--FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.11, revise paragraph (a) to read as follows:

§ 648.11 At-sea sea sampler/observer coverage.

(a) The Regional Administrator may request any vessel holding a permit for Atlantic sea scallops, NE multispecies, monkfish, skates, Atlantic mackerel, squid, butterfish, scup, black sea bass, bluefish, spiny dogfish, Atlantic herring, tilefish, Atlantic surfclam, ocean quahog, or Atlantic deep-sea red crab; or a moratorium permit for summer flounder; to carry a NMFS-certified fisheries observer. A vessel holding a permit for Atlantic sea scallops is subject to the additional requirements specific in paragraph (g) of this section. Also, any vessel or vessel owner/operator that fishes for, catches or lands hagfish, or intends to fish for, catch, or land hagfish in or from the exclusive economic zone must carry a NMFS-certified fisheries observer when requested by the Regional Administrator in accordance with the requirements of this section.

3. In § 648.14, redesignate paragraphs (j)(3) through (6) as (j)(4) through (7) and add paragraph (j)(3) to read as follows:

§ 648.14 Prohibitions.

(j) ***

(3) *ITQ cost recovery*. (i) Fail to pay an ITQ cost recovery bill for which they are responsible by the due date specified in a final decision, as specified at § 648.74(c)(6)(iii)(C).

(ii) Possess or land surfclams or ocean quahogs harvested in or from the EEZ if the associated ITQ permit has been suspended for non-payment, as specified at § 648.74(c)(6)(iii)(C).

4. In § 648.72, revise paragraphs (a) introductory text and (a)(1) to read as follows:

§ 648.72 Surfclam and ocean quahog specifications.

(a) *Establishing catch quotas*. The amount of surfclams or ocean quahogs that may be caught annually by fishing vessels subject to these regulations will be specified for up to a 3-year period by the Regional Administrator. Specifications of the annual quotas will be accomplished in the final year of the quota period, unless the quotas are modified in the interim pursuant to paragraph (b) of this section.

(1) *Quota reports*. On an annual basis, MAFMC staff will produce and provide to the MAFMC an Atlantic surfclam and ocean quahog annual quota recommendation paper based on the ABC recommendation of the SSC, the latest available stock assessment report prepared by NMFS, data reported by harvesters and processors, and other relevant data, as well as the information contained in paragraphs (a)(1)(i) through (vi) of this section. Based on that report, and at least once prior to August 15 of the year in which a multi-year annual quota specification expires, the MAFMC, following an opportunity for public comment, will recommend to the Regional Administrator annual quotas and estimates of DAH and DAP for up to a 3-year period. In selecting the annual quotas, the MAFMC shall consider the current stock assessments, catch reports, and other relevant information concerning:

- (i) Exploitable and spawning biomass relative to the quotas.
- (ii) Fishing mortality rates relative to the quotas.
- (iii) Magnitude of incoming recruitment.
- (iv) Projected effort and corresponding catches.
- (v) Geographical distribution of the catch relative to the geographical distribution of the resource.
- (vi) Status of areas previously closed to surfclam fishing that are to be opened during the year and areas likely to be closed to fishing during the year.

5. In § 648.74, add paragraph (c) to read as follows:

§ 648.74 Individual Transferable Quota (ITQ) Program.

(c) *ITQ cost recovery*—(1) *General*. The cost recovery program collects fees of up to three percent of the ex-vessel value of surfclams or ocean quahogs harvested under the ITQ program in accordance with the Magnuson-Stevens Act. NMFS collects these fees to recover the actual costs directly related to the management, data collection, and enforcement of the surfclam and ocean quahog ITQ program.

(2) *Fee responsibility*. If you are an ITQ permit holder who holds ITQ quota share and receives an annual allocation pursuant to paragraph (a) of this section, you shall incur a cost recovery fee, based on all landings of surfclams or ocean quahogs authorized under your initial annual allocation of cage tags. You are responsible for paying the fee assessed by NMFS, even if the landings are made by another ITQ permit holder (i.e., if you transfer cage tags to another individual who subsequently uses those tags to land clams). If you permanently transfer your

quota share, you are still responsible for any fee that results from your initial annual allocation of cage tags even if the landings are made after the quota share is permanently transferred.

(3) *Fee basis.* NMFS will establish the fee percentages and corresponding per-tag fees for both the surfclam and ocean quahog ITQ fisheries each year. The fee percentages cannot exceed three percent of the ex-vessel value of surfclams and ocean quahogs harvested under the ITQ fisheries pursuant to section 304(d)(2)(B) of the Magnuson-Stevens Act.

(i) *Calculating fee percentage.* In the first quarter of each calendar year, NMFS will calculate the fee percentages for both the surfclam and ocean quahog ITQ fisheries based on information from the previous year. NMFS will use the following equation to annually determine the fee percentages: $\text{Fee percentage} = \text{the lower of 3 percent or } (DPC/V) \times 100$, where:

(A) “DPC,” or direct program costs, are the actual incremental costs for the previous fiscal year directly related to the management, data collection, and enforcement of the ITQ program. “Actual incremental costs” mean those costs that would not have been incurred but for the existence of the ITQ program. If the amount of fees collected by NMFS is greater or lesser than the actual incremental costs incurred, the DPC will be adjusted accordingly for calculation of the fee percentage in the following year.

(B) “V” is the total ex-vessel value from the previous calendar year attributable to the ITQ fishery.

(ii) *Calculating per-tag fee.* To facilitate fee collection, NMFS will convert the annual fee percentages into per-tag fees for both the surfclam and ocean quahog ITQ fisheries. NMFS will use the following equation to determine each per-tag fee: $\text{Per-Tag Fee} = (\text{Fee Percentage} \times V)/T$, where:

(A) “T” is the number of cage tags used, pursuant to § 648.77, to land shellfish in the ITQ fishery in the previous calendar year.

(B) “Fee percentage” and “V” are defined in paragraph (c)(i) of this section.

(C) The per-tag fee is rounded down so that it is expressed in whole cents.

(iii) *Publication.* During the first quarter of each calendar year, NMFS will announce the fee percentage and per-tag fee for the surfclam and ocean quahog ITQ fisheries, and publish this information on the Regional Office website (www.greateratlantic.fisheries.noaa.gov).

(4) *Calculating individual fees.* If you are responsible for a cost recovery fee under paragraph (c)(2) of this section, the fee amount is the number of ITQ cage tags you were initially allocated at the start of the fishing year that were subsequently used to land shellfish multiplied by the relevant per-tag fee, as described in paragraph (c)(3)(ii) of this section. If no tags from your initial allocation are used to land clams you will not incur a fee.

(5) *Fee payment and collection.* NMFS will send you a bill each year for any applicable ITQ cost recovery fee.

(i) *Payment due date.* You must submit payment within 30 days of the date of the bill.

(ii) *Payment method.* You may pay your bill electronically using a credit card or direct Automated Clearing House withdrawal from a designated checking account through the Federal web portal, www.pay.gov, or another internet site designated by the Regional Administrator. Instructions for electronic payment will be included with your bill and are available on the payment web site. Alternatively, payment by check may be authorized by the Regional Administrator if he/she determines that electronic payment is not practicable.

(6) *Payment compliance.* If you do not submit full payment by the due date, NMFS will notify you in writing via an initial administrative determination (IAD) letter.

(i) *IAD*. In the IAD, NMFS will:

(A) Describe the past-due fee;

(B) Describe any applicable interest charges that may apply;

(C) Provide you 30 days to either pay the specified amount or submit an appeal; and

(D) Include instructions for submitting an appeal.

(ii) *Appeals*. If you wish to appeal the IAD, your appeal must:

(A) Be in writing;

(B) Allege credible facts or circumstances;

(C) Include any relevant information or documentation to support your appeal; and

(D) Be received by NMFS no later than 30 calendar days after the date on the IAD. If the last day of the time period is a Saturday, Sunday, or Federal holiday, the time period will extend to the close of the business on the next business day. Your appeal must be mailed or hand delivered to the address specified in the IAD.

(iii) *Final decision*--(A) *Final decision on your appeal*. If you appeal an IAD, the Regional Administrator shall appoint an appeals officer. After determining there is sufficient information and that all procedural requirements have been met, the appeals officer will review the record and issue a recommendation on your appeal to the Regional Administrator, which shall be advisory only. The recommendation must be based solely on the record. Upon receiving the findings and recommendation, the Regional Administrator, acting on behalf of the Secretary of Commerce, will issue a written decision on your appeal which is the final decision of the Department of Commerce.

(B) *Final decision if you do not appeal.* If you do not appeal the IAD within 30 calendar days, NMFS will notify you via a final decision letter. The final decision will be from the Regional Administrator and is the final decision of the Department of Commerce.

(C) *If the final decision determines that you are out of compliance.* (1) After the final decision has been made, NMFS may suspend your ITQ permit, thereby prohibiting any transfer of cage tags or quota share, use of associated cage tags to land surfclams or ocean quahogs, or renewal of your ITQ permit until the outstanding balance is paid in full, including any applicable interest.

(2) The final decision will require full payment within 30 calendar days.

(3) If full payment is not received within 30 calendar days of issuance of the final decision, NMFS may refer the matter to the appropriate authorities for the purposes of collection or enforcement.

(7) *Annual report.* NMFS will publish annually a report on the status of the ITQ cost recovery program. The report will provide details of the costs incurred by NMFS for the management, data collection, and enforcement of the surfclam and ocean quahog ITQ program, and other relevant information at the discretion of the Regional Administrator.

6. In § 648.79, revise paragraph (a)(1) to read as follows:

§ 648.79 Surfclam and ocean quahog framework adjustments to management measures.

(a)***

(1) *Adjustment process.* The MAFMC shall develop and analyze appropriate management actions over the span of at least two MAFMC meetings. The MAFMC must provide the public with advance notice of the availability of the recommendation(s), appropriate justification(s) and economic and biological analyses, and the opportunity to comment on the proposed

adjustment(s) at the first meeting, and prior to and at the second MAFMC meeting. The MAFMC's recommendations on adjustments or additions to management measures must come from one or more of the following categories: Adjustments within existing ABC control rule levels; adjustments to the existing MAFMC risk policy; introduction of new AMs, including sub-ACTs; description and identification of EFH (and fishing gear management measures that impact EFH); habitat areas of particular concern; set-aside quota for scientific research; VMS; and suspension or adjustment of the surfclam minimum size limit. Issues that require significant departures from previously contemplated measures or that are otherwise introducing new concepts may require an amendment of the FMP instead of a framework adjustment.

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